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### Consumer Protection

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# Consumer Protection

## Consumer Protection; homestead filing services advertisements

Business and Professions Code § 17537.6 (new).  
AB 684 (Speier); 1987 STAT. CH. 974

Existing law generally prohibits any person from making false or misleading statements regarding the performance of services in advertising.<sup>1</sup> Chapter 974 prohibits any person from making a false or misleading statement regarding the offering or performance of a homestead filing service.<sup>2</sup> Chapter 974 also requires the offeror of a

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1. CAL. BUS. & PROF. CODE §§ 17537 (prohibits false or misleading conditional offers of prizes or gifts), 17537.1 (prohibits false or misleading inducements to visit particular locations), 17537.5 (prohibits false or misleading solicitations for energy conservation products), 17536 (the Attorney General or other designated public officer may bring an action for recovery of a civil penalty for violation of false and deceptive advertising statutes). *See id.* §§ 22430(a) (the sale of a deceptive identification document is prohibited unless "NOT A GOVERNMENT DOCUMENT" is printed in at least 14-point type across the document's face), 22430(b) (definition of deceptive identification document). *See also* People v. Superior Court, 96 Cal. App. 3d 181, 192, 157 Cal. Rptr. 628, 636, cert. denied 446 U.S. 935 (1979) (California's statute prohibiting false and deceptive advertising does not violate the first amendment of the Constitution). *See generally* Comment, *The Role of California's Attorney General and District Attorneys in Protecting the Consumer*, 4 U.C.D. LAW REV. 35 (1971) (discussing the Attorney General's and District Attorney's new roles as consumer protectors); Lorena, *Consumer Fraud and the San Diego District Attorney's Office*, 8 SAN DIEGO L. REV. 47 (1971) (discussing why the District Attorney in San Diego allocated deputies and investigators to consumer protection); Comment, *Actions for False Advertising Under California Business and Professions Code Section 17536: An Argument for Applying Civil Rules of Proof*, 5 U.S.F.L. REV. 440 (1971) (regarding the degree of the burden of proof required in civil actions for fraudulent advertising); Comment, *Enforcing California's False Advertising Law: A guide to Adjudication*, 25 HAST. L.J. 1105 (1974) (discussing how the use of predominantly civil procedures will aid California prosecutors in the efficient prosecution of false advertising).

2. CAL. BUS. & PROF. CODE § 17537.6(a). *See id.* § 17537.6(e)(1) (definition of homestead filing service). Untrue or misleading statements are representations when any of the following is true: (1) The preparation or recordation of a homestead declaration will prevent the forced sale of a judgment debtor's dwelling; (2) preparation or recordation of such declaration will prevent mortgage, deed of trust or mechanic's lien foreclosures; (3) any of the specified provisions regarding homestead exemptions in the Code of Civil Procedure are available only to those who prepare or record a homestead declaration; (4) the declaration is in any way related to the obtaining of any homeowner's exemption to real property taxes; (5) preparation or recordation of a homestead declaration is required by law; (6) the offeror of a homestead filing service has a file or record covering a particular solicitee; (7) an offeror of the service is, or is affiliated with, any charitable or public service organization when the offeror is not

homestead filing service to make a specified disclosure of homesteaders' rights and other information to a solicitee.<sup>3</sup> Every offeror of the service must deliver each notarized homestead declaration<sup>4</sup> to the appropriate county recorder for recordation as soon as the homestead declarant requires.<sup>5</sup> The offeror must pay all notarization and recordation fees<sup>6</sup> and may not collect a buyer's money until after the declaration is recorded.<sup>7</sup>

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affiliated with specified tax exempt organizations; or (8) the offeror of the service is, or is affiliated with, any governmental entity. *Id.* § 17537.6(a)(1)-(8). A violation of subsection 8 includes the misleading use of specified symbols, business names, and envelopes that simulate those of governmental entities. *Id.* § 17537.6(a)(8)(A)-(C).

3. *Id.* § 17537.6(b)(1). The disclosure must state:

THIS HOMESTEAD FILING SERVICE IS NOT ASSOCIATED WITH ANY GOVERNMENT AGENCY. YOU DO NOT HAVE TO RECORD A HOMESTEAD DECLARATION. RECORDING A HOMESTEAD DECLARATION DOES NOT PROTECT YOUR HOME AGAINST FORCED SALE BY A CREDITOR. YOU MAY WISH TO CONSULT A LAWYER ABOUT THE BENEFITS OF RECORDING A HOMESTEAD DECLARATION. IF YOU WANT TO RECORD A HOMESTEAD, YOU CAN FILL OUT A HOMESTEAD DECLARATION FORM BY YOURSELF, HAVE YOUR SIGNATURE NOTARIZED, AND HAVE THE FORM RECORDED BY THE COUNTY RECORDER.

*Id.* This disclosure, printed in 12-point boldface type and enclosed in a box formed by a heavy line, must be placed at the top of each page of every advertisement circulated by an offeror.

*Id.* § 17537.6(b)(2). Additionally, this disclosure must be recited before every oral solicitation and broadcast advertisement and the disclosure must be delivered in writing before any buyer is obligated to pay for any homestead filing service. *Id.* § 17537.6(b)(3).

4. *See id.* § 17537.6(e)(2) (definition of homestead declaration).

5. *Id.* § 17537.6(c) (but no later than 10 days after the declaration is notarized). *See Anderson v. Willson*, 48 Cal. App. 289, 293, 191 P. 1016, 1018 (1920) (proper recordation, by copying and correctly indexing in the chain of title, imparts constructive notice of the instrument's contents, which is the equivalent of actual knowledge). *See also CALIFORNIA CONTINUING EDUCATION OF THE BAR, Real Property Sales Transactions*, § 1197 (the effect of proper recordation).

6. CAL. BUS. & PROF. CODE § 17537.6(c).

7. *Id.* § 17537.6(d) (the total amount charged, including notarization and recordation fees, may not be greater than \$25). *See* CAL. GOV'T CODE § 27360 (the county recorder must charge and collect required recordation fees).